

Marc Toberoff (MT 4862)
TOBEROFF & ASSOCIATES, P.C.
2049 Century Park East, Suite 2720
Los Angeles, CA 90067
Tel: 310-246-3333

Attorneys for Defendants Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan M. Kirby

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,
MARVEL CHARACTERS, INC. and
MVL RIGHTS, LLC,

Plaintiffs,

Civil Action No. 10-141 (CM) (KF)

-against-

[Hon. Colleen McMahon]

LISA R. KIRBY, BARBARA J. KIRBY,
NEAL L. KIRBY and SUSAN M. KIRBY,

[ECF Case]

Defendants.

**DECLARATION OF MARC TOBEROFF, ESQ. IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

I, Marc Toberoff, hereby declare as follows:

1. I am familiar with the facts set forth below and make this declaration in support of defendants' Motion to Dismiss. The facts set forth herein are known to me of my own personal firsthand knowledge and, if called as a witness, I could and would testify competently thereto under oath.

2. I am an attorney and the founding partner of Toberoff & Associates, P.C., located at 2049 Century Park Place, Suite 2720, Los Angeles, California, 90067.

3. My firm represents Lisa R. Kirby, Barbara J. Kirby, Neal L. Kirby and Susan M. Kirby (the "Kirbys"), the children of legendary comic book artist and writer Jack Kirby (a.k.a. Jacob Kurtzberg).

4. On September 16, 2009, the Kirbys availed themselves of their right under the Copyright Act to recapture their father's copyright interests by serving 45 notices of termination ("Termination Notices") by first class mail on plaintiffs and all of their known predecessors and successors-in-interest pursuant to 17 U.S.C. § 304(c).

5. On December 3, 2009, I held an in-person settlement conference in Los Angeles with the general counsel of plaintiffs' parent corporation, The Walt Disney Company ("Disney") regarding the Termination Notices. On December 16, 2009, I engaged in another lengthy settlement conference with Disney's general counsel and plaintiffs' current counsel. At the conclusion of the settlement conference, it was clearly contemplated and expected that Disney and plaintiffs would get back to me regarding the settlement under discussion after the Christmas holidays. Instead, plaintiffs filed the present action on January 8, 2010, without warning or any prior indication that our settlement discussions had concluded.

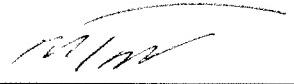
6. On March 9, 2010, my firm filed on behalf of all of the Kirbys a complaint in the United States District Court for the Central District of California against Marvel Worldwide, Inc., Marvel Characters, Inc., MVL Rights, LLC and Disney seeking, *inter alia*, a declaratory judgment that the Kirbys' Termination Notices are valid and effective. A true and correct copy of that complaint is attached hereto as "Exhibit A."

7. A true and correct copy of the California Secretary of State's online listing for The Walt Disney Company that I caused to be printed is attached hereto as "Exhibit B."

8. A true and correct copy of a letter from plaintiffs' counsel James W. Quinn, Esq. to me dated February 8, 2010 is attached hereto as "Exhibit C."

I declare under the penalty of perjury that to the best of knowledge the foregoing is true and correct.

Dated: March 9, 2010


Marc Toberoff